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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,517	12/31/2003	Michael G. Lisanke	SOM920030007US1	9240
55420 7590 07/09/2009 FLETT, GIBBONS, GUTMAN, BONGINI & BIANCO P.L. 551 NW 77TH STREET SUITE 111 BOCA RATON, FL 33487				
EXAMINER WANG, HARRIS C				
ART UNIT 2439		PAPER NUMBER		
NOTIFICATION DATE 07/09/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* MICHAEL LISANKE  
AND DAVID MEDINA

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Application 10/750,517  
Technology Center 2400

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Mailed: July 8, 2009

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Before ERIC W. HAWTHORNE, *Supervisory Paralegal Specialist*  
HAWTHORNE, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on June 22, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated January 15, 2009. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c)(v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages two through eight of the Appeal Brief filed January 15, 2009 is deficient because it improperly maps to US Pub. No. 2005/0149750 and not to the original specification in accordance with 37 CFR § 41.37(c)(v).

Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject

matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

### CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed January 15, 2009 defective, as required by 37 CFR § 41.37(d);
- 2) notify the Appellant to submit a "paper" which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);
- 3) acknowledge and consider any "paper" submitted by Appellant to correct the Appeal Brief;
- 4) for such further action as may be required.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

EWH/tkl

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